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8	Attorneys for Complainant .	·	
9	BEFORE THE BOARD OF REGISTERED NURSING		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11		Case No. 2010 - 296	
12	In the Matter of the Accusation Against:	Case No.	
13	KEN GEORGE MATIJEVICH 604 Oliver Avenue		
14	Huntington Beach, CA 92648	ACCUSATION	
15	Registered Nurse License No. 597315		
16	Respondent.		
17			
- 18	Complainant alleges:		
19	PARTIES		
20	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her		
21	official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department		
22	of Consumer Affairs.		
23	2. On or about April 3, 2002, the Board of Registered Nursing issued Registered Nurse		
24	License Number 597315 to Ken George Matijevich (Respondent). The Registered Nurse License		
25	was in full force and effect at all times relevant to the charges brought herein and will expire on		
26	February 28, 2010, unless renewed.		
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		1	

Accusation

JURISDICTION

- 3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.
- 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

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- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
 - "(b) Failure to comply with any mandatory reporting requirements.
 - "(c) Theft, dishonesty, fraud, or deceit.
- "(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."
 - 9. California Code of Regulations, title 16, section 1445, states:
- "(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:
 - "(1) Nature and severity of the act(s) or offense(s).

Accusation

"(2) Total criminal record.

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SECOND CAUSE FOR DISCIPLINE

(May 21, 2009 Criminal Conviction for DUI With a Prior DUI on December 14, 2008)

- 12. Respondent has subjected his license to disciplinary action under Code sections 490 and 2761, subdivision (f), in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:
- a. On or about May 21, 2009 in a criminal proceeding entitled *People of the State of California v. Kenneth George Matijevich*, aka Ken George Matijevich, in Orange County Superior Court, Harbor Justice Center, Newport Beach Facility, case number 09HM00577, Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152 (a) and (b), misdemeanor driving under the influence of alcohol, and with a BAC of more than .08 % by weight, with an enhancement of having sustained a prior driving under the influence conviction, as is set forth in paragraph 10, above, and a further enhancement of having a BAC greater than .15%, to wit .18%.
- b. The circumstances that led to the conviction were that on or about December 14, 2008, around 1918 hours Respondent drove a 2006 Nissan Xterra SUV eastbound on SR1 east of Crystal Heights in Newport Beach, and drove the vehicle onto the painted median, then turned across the median onto private property. A Newport Beach police officer made a traffic stop of Respondent, and detected an odor of alcohol on his breath. Respondent's eyes were watery and bloodshot, his pupils were constricted, and he had slurred speech. Upon receipt of permission from Respondent, the officer searched his car and found a three-fourths full Sparks Light alcoholic beverage (6% alcohol) on the rear floorboard behind the passenger seat within reach of the driver. Respondent admitted that it was his. Two additional empty cans of the product were found in the back seat area. Respondent was asked to perform field sobriety tests, which he was unable to perform as explained and demonstrated. Respondent was asked to provide a breath sample, but was twice unable to complete the test as explained, although one of the tests yielded a result of 19% BAC. Respondent was arrested for driving under the influence

of alcohol, and transported to the Newport Beach Police Department, whereupon a blood test was performed, which resulted in a BAC of .18%.

c. As a result of Respondent's conviction, on May 28, 2009, Respondent was sentenced to three years informal probation, with requirements that he violate no law, pay fines, assessments and fees, attend and complete an 18 month Multiple Offender Alcohol Program, serve 30 days in the Orange County Jail to be served on 10 weekends, in addition to other terms and conditions of probation.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

13. Respondent is subject to disciplinary action under Code section 2762, subdivision (b), in that Respondent used alcoholic beverages to an extent or in a manner dangerous or injuries to himself and to the public, when on two separate occasions, he drove a motor vehicle while under the influence of alcohol, as is more fully described in paragraphs 11 and 12 above, which are incorporated herein by this reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Convictions of Alcohol-Related Offenses)

14. Respondent is subject to disciplinary action under Code section 2762, subdivision (c), in that Respondent was convicted of criminal offenses involving consumption of alcohol, when on two separate occasions, he was convicted of driving under the influence of alcohol, as is more fully described in paragraphs 11 and 12 above, which are incorporated herein by this reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- Revoking or suspending Registered Nurse License Number 597315, issued to Ken George Matijevich Ken George Matijevich.
- 2. Ordering Ken George Matijevich to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

1	3. Taking such other and further a	action as deemed necessary and proper.
2	DATED: 12/15/09	Louise R. Bailey
3	DATED.	LOUISE R. BAILEY, M.ED., KN
4		Board of Registered Nursing Department of Consumer Affairs State of California
5		State of California Complainant
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